

UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF MICHIGAN
NORTHERN DIVISION

JESSE E. JONES,

Plaintiff,

Case No. 2:08-CV-133

v.

HON. ROBERT HOLMES BELL

MARY BONEVELLE,

Defendant.

**ORDER APPROVING AND ADOPTING
REPORT AND RECOMMENDATION AND GRANTING
DEFENDANT'S MOTION FOR SUMMARY JUDGMENT**

On August 29, 2011, Magistrate Judge Timothy P. Greeley issued a Report and Recommendation ("R&R") recommending that Defendant's second motion for summary judgment be granted on grounds that Plaintiff failed to exhaust administrative remedies. (Dkt. No. 46.) This matter is before the Court on Petitioner's objections to the R&R. (Dkt. No. 47).

This Court makes a *de novo* determination of those portions of an R&R to which specific objections are made. 28 U.S.C. § 636(b)(1); Fed. R. Civ. P. 72(b). The Court may accept, reject, or modify any or all of the Magistrate Judge's findings or recommendations. *Id.*

Plaintiff objects to the Magistrate Judge's determination that Plaintiff failed to exhaust administrative remedies because his grievance was rejected. Plaintiff argues that the rejection of his grievance was unfounded. However, these arguments should have been made

during the grievance process, not in this § 1983 litigation. Plaintiff's grievance was rejected at all levels of the grievance process for failure to follow grievance procedures. Unfortunately for Plaintiff, when a grievance is rejected, as here, on grounds "explicitly set forth in the applicable grievance procedure, 'a subsequent § 1983 claim based on the grievance will be subject to dismissal for failure to properly exhaust.'" *Great v. Gelabert*, No. 1:07-cv-203, 2008 WL 474098 at *2 n.1 (W.D. Mich. Feb. 15, 2008). Accordingly,

IT IS HEREBY ORDERED that the August 29, 1011, R&R (Dkt. No. 46) is **APPROVED** and **ADOPTED** as the opinion of the Court.

IT IS FURTHER ORDERED that Plaintiff's objections to the R&R (Dkt. No. 47) are overruled.

IT IS FURTHER ORDERED that Defendant's second motion for summary judgment (Dkt. No. 37) is **GRANTED**.

Dated: September 9, 2011

/s/ Robert Holmes Bell
ROBERT HOLMES BELL
UNITED STATES DISTRICT JUDGE